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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/712,655

11/13/2003

Altan J. Stalker

A-8121

8962

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12/27/2007

SCIENTIFIC-ATLANTA, INC.
INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

ALSIP, MICHAEL

ART UNIT

PAPER NUMBER

2186

NOTIFICATION DATE

DELIVERY MODE

12/27/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOmail@sciatl.com

Office Action Summary

Application No.

10/712,655

Applicant(s)

STALKER, ALTAN J.

Examiner

Michael Alsip

Art Unit

2186

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/23/2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 2, 4-6 and 18, 19, 21-23** are rejected under 35 U.S.C. 102(b) as being anticipated by Judge et al. (US 6,430,570 B1).

3. Consider **claims 1 and 18**, Judge et al. discloses a system and method for managing memory, the system and method comprising a memory with logic, and receiving an indication of application state from a plurality of applications in memory (abstract, Col. 4 lines 55-67, and Col. 5 lines 1-15); and determining which of the plurality of applications to effect removal from the memory based on the received indication (Col. 5 lines 1-15, Col. 7 lines 28-51, and Col. 9 lines 3-11).

4. Consider **claims 2 and 19**, as applied to **claims 1 and 18** above, Judge et al. discloses wherein the step of receiving an indication of application state includes receiving at least one of an indication of a stateless state, an indication of a stateful state with a state record, and an indication of a stateful state with no state record (Col. 7 lines 52-65, where the application manager saves a state of the application before unloading it from memory therefore having a stateful state with a state record, the fact that the application manager stores the state of the application, indicates that the application manager is notified that a state needs to be saved therefore indicating a

stateful state with state record. Where the claim language only requires an indication of one of the above states and the stateful state with a state record is disclosed).

5. Consider **claims 4 and 21**, as applied to **claims 2 and 19** above, Judge et al. discloses wherein the step of receiving an indication of a stateful state with a state record includes receiving an indication of a state that indicates a user would perceive no significant difference between a presentation associated with one of the plurality of applications before and after removal from the memory and reloading to the memory because the state is saved in the state record (Col. 7 lines 52-65).

6. Consider **claims 5 and 22**, as applied to **claims 4 and 21** above, Judge et al. discloses further including the steps of effecting the removal of the application with a stateful state with a state record and saving the state record (Col. 7 lines 52-65).

7. Consider **claims 6 and 23**, as applied to **claims 5 and 22** above, Judge et al. discloses further including, responsive to a user activating the removed application, restoring the removed application with the saved state record (Col. 7 lines 52-65).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3, 9, 10, 12, 20, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Judge et al. (US 6,430,570 B1), as applied to **claims 1 and 18** above, and further in view of Enterprise JavaBeans Component Architecture: Designing and Coding Enterprise Applications, Henceforth referred to as EJB.

10. Consider **claims 3 and 20**, as applied to **claims 2 and 19** above, Judge et al. discloses all the limitations of **claims 2 and 19** above, and also discusses the use of a Java application manager, but does not explicitly state the applications having a stateless state. EJB teaches stateless state applications are an integral part of Java systems and that stateless state applications lend to better performance in the system by freeing up resources and being scalable for a large number of clients (pg. 1 section: Enterprise JavaBeans (EJB), pg.'s 3-4 section 2.4 Enterprise JavaBeans) therefore being obvious to one of ordinary skill in the art at the time of the invention.

11. Consider **claims 9 and 26**, as applied to **claims 1 and 18** above, Judge et al. discloses the ability to set or change the order in which applications are unloaded in case of a low or no memory condition (Col. 7 lines 28-51 and Col. 8 lines 22-30 and lines 54-58), but does not explicitly state wherein the step of determining includes the

steps of determining that an application with a stateless state is removed before an application with a stateful state with a state record, and that a stateful state with a state record is removed before a stateful state with no state record, however EJB teaches that stateless applications have better performance due to the fact that no data is stored back and forth to secondary memory therefore freeing up resources that a stateful application would require if it were stored to and from secondary memory (pg. 4 ¶'s 2 and 7, therefore removing an application with a stateless state before an application with a stateful state would reduce latency in the system and provide better performance for the user. The examiner is considering, for the purpose of this claim, that the stateful state with and state record and the stateful state without a state record to be synonymous, because the state record is not recorded until the data is to be unloaded therefore before the unload procedure the stateful state has no state record and afterwards the stateful state has a state record, both being the same stateful state application, therefore the stateful state always has a record before being removed).

It would have been obvious to one of ordinary skill in the art at the time of the invention to remove the application with the stateless state before an application with a stateful state in the system of Judge et al., because EJB discloses that this reduces latency and overhead in the system (pg. 4 ¶'s 2 and 7).

12. Consider **claims 10 and 27**, as applied to **claims 1 and 18** above, Judge et al. discloses the ability to set or change the order in which applications are unloaded in case of a low or no memory condition (Col. 7 lines 28-51 and Col. 8 lines 22-30 and lines 54-58), but does not explicitly state further including the steps of effecting the

removal of an application with a stateless state before the removal of an application with a stateful state with a state record, and effecting the removal of an application with a stateful state with a state record before the removal of an application with a stateful state with no state record, however EJB teaches that stateless applications have better performance due to the fact that no data is stored back and forth to secondary memory therefore freeing up resources that a stateful application would require if it were stored to and from secondary memory (pg. 4 ¶'s 2 and 7, therefore removing an application with a stateless state before an application with a stateful state would reduce latency in the system and provide better performance for the user. The examiner is considering, for the purpose of this claim, that the stateful state with and state record and the stateful state without a state record to be synonymous, because the state record is not recorded until the data is to be unloaded therefore before the unload procedure the stateful state has no state record and afterwards the stateful state has a state record, both being the same stateful state application, therefore the stateful state always has a record before being removed).

It would have been obvious to one of ordinary skill in the art at the time of the invention to remove the application with the stateless state before an application with a stateful state in the system of Judge et al., because EJB discloses that this reduces latency and overhead in the system (pg. 4 ¶'s 2 and 7).

13. Consider **claim 12**, Judge et al. discloses a method for managing memory, said method comprising the steps of: receiving an indication that memory space is needed in memory; receiving an indication of application state from a plurality of applications in the

memory (abstract, Col. 4 lines 55-67, Col. 5 lines 1-15, Col. 7 lines 28-51, and Col. 9 lines 3-11), wherein the step of receiving an indication of application state includes receiving at least one of an indication of a stateless state, an indication of a stateful state with a state record, and an indication of a stateful state with no state record (Col. 7 lines 52-65, where the application manager saves a state of the application before unloading it from memory therefore having a stateful state with a state record, the fact that the application manager stores the state of the application, indicates that the application manager is notified that a state needs to be saved therefore indicating a stateful state with state record).

Judge et al. discloses the ability to set or change the order in which applications are unloaded in case of a low or no memory condition (Col. 7 lines 28-51 and Col. 8 lines 22-30 and lines 54-58), but does not explicitly state determining which of the plurality of applications to effect removal from the memory based on the received indication, wherein the step of determining includes the steps of determining that an application with a stateless state is removed before an application with a stateful state with a state record, and that a stateful state with a state record is removed before a stateful state with no state record; and effecting the removal of an application with a stateless state before the removal of an application with a stateful state with a state record, and effecting the removal of an application with a stateful state with a state record before the removal of an application with a stateful state with no state record, however EJB teaches that stateless applications have better performance due to the fact that no data is stored back and forth to secondary memory therefore freeing up

resources that a stateful application would require if it were stored to and from secondary memory (pg. 4 ¶'s 2 and 7, therefore removing an application with a stateless state before an application with a stateful state would reduce latency in the system and provide better performance for the user. The examiner is considering, for the purpose of this claim, that the stateful state with and state record and the stateful state without a state record to be synonymous, because the state record is not recorded until the data is to be unloaded, therefore before the unload procedure the stateful state has no state record and afterwards the stateful state has a state record, both being the same stateful state application, therefore the stateful state always has a record before being removed).

It would have been obvious to one of ordinary skill in the art at the time of the invention to remove the application with the stateless state before an application with a stateful state in the system of Judge et al., because EJB discloses that this reduces latency and overhead in the system (pg. 4 ¶'s 2 and 7).

14. **Claims 7, 8, 11, 24, 25 and 28** are rejected under 35 U.S.C. 103(a) as being unpatentable over Judge et al. (US 6,430,570 B1).

15. Consider **claims 7 and 24**, as applied to **claims 2 and 19** above, Judge et al. discloses all the limitations of **claims 2 and 19** above, but does not explicitly state wherein the step of receiving an indication of a stateful state with no state record includes receiving an indication of a state that indicates a user would perceive a difference between a presentation associated with one of the plurality of applications before and after removal from the memory and reloading to the memory, however the

examiner is taking official notice to the fact that receiving an indication of a stateful state with no state record is common and well-known. As an example, when a word document is being closed by a user before having been saved (stateful state with no state record), the user is prompted with information asking the user if they wish to save their unsaved data (yes or no) or cancel the closing of the application, where the user is given the option to select no therefore receiving an indication of a stateful state with no state record, therefore indicating to the user that there will be a perceived difference.

It would have been obvious to one of ordinary skill in the art at the time of the invention for the user to receive an indication about information pertaining to the state of an application the user is using when that application is to be removed, because providing the user with options and information with respect to the applications the user is using allows for better user control, flexibility and user experience and to better manage the unintentional loss of user data.

16. Consider **claims 8 and 25**, as applied to **claims 7 and 24** above, Judge et al. does not explicitly state wherein the step of receiving an indication of a stateful state with no state record includes receiving unload information, wherein the unload information includes at least one of an unload information explanation and unload information choices, however the examiner is taking official notice to the fact that receiving an indication of a stateful state with no state record is common and well-known. As an example, when a word document is being closed by a user before having been saved (stateful state with no state record), the user is prompted with unload

information choices pertaining to whether the user wishes to save their unsaved data (yes or no) or cancel the closing of the application.

It would have been obvious to one of ordinary skill in the art at the time of the invention for the user to be prompted with information pertaining to the state of an application the user is using and provide options to the user when that application is to be removed, because providing the user with options and information with respect to the applications the user is using allows for better user control, flexibility and user experience and to better manage the unintentional loss of user data.

17. Consider **claims 11 and 28**, as applied to **claims 1 and 18** above, Judge et al. discloses all the limitations of **claims 1 and 18** above, but does not explicitly state further including the step of providing an explanation to a user when an application to be removed from the memory includes a stateful state with no state record, wherein the explanation informs the user the result of removing the application, the examiner is taking official notice to the fact that when an application is removed from memory, it is common for the user to be prompted with information informing the user the result of removing the application. As an example, when a word document is being closed by a user before having been saved (stateful state with no state record), the user is prompted with information asking the user if they wish to save their unsaved data (yes or no) or cancel the closing of the application, thereby providing the user with information informing the user the result of removing the application.

It would have been obvious to one of ordinary skill in the art at the time of the invention for the user to be prompted with information pertaining to the state of an

application the user is using when that application is to be removed, because providing the user with options and information with respect to the applications the user is using allows for better user control, flexibility and user experience and to better manage the unintentional loss of user data.

18. **Claims 13-17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Judge et al. (US 6,430,570 B1), and further in view of Matsumoto (US 2002/0188461 A1).

19. Consider **claim 13**, Judge et al. disclose a method for supporting the management of memory, said method comprising the steps of: receiving an indication of a user request for a service (Col. 9 lines 3-40); responsive to receiving the indication, receiving an indication that memory space beyond that which is available is needed (Col. 9 lines 3-40). But, Judge et al. does not explicitly disclose providing an explanation that informs a user of the effect of removing an application from memory to provide the requested service, whereas Matsumoto does teach this feature (pg. 10 ¶ [0177], where Matsumoto teaches to ask the user for confirmation as to whether to delete the data or not, where the effect is that the data will be deleted).

It would have been obvious to one of ordinary skill in the art at the time of the invention for the user to be prompted with information pertaining to the state of an application the user is using when that application is to be removed in the system of Judge et al., because providing the user with options and information with respect to the applications the user is using allows for better user control, flexibility and user

experience and to better manage the unintentional loss of user data (Judge et al. Col. 9 lines 3-40 and Matsumoto pg. 10 ¶ [0177]).

20. Consider **claim 14**, as applied to **claim 13** above, the combination of Judge et al. and Matsumoto disclose further including the step of providing the user with choices that enable the user to determine whether to allow the provision of the requested service (Judge et al. Col. 9 lines 3-40 and Matsumoto pg. 10 ¶ [0177], where choosing to delete or not delete the file, in a low or no memory situation, determines whether the file can be loaded or not).

21. Consider **claim 15**, as applied to **claim 13** above, the combination of Judge et al. and Matsumoto disclose further including the step of retaining the application in the memory in response to the user selecting a choice associated with terminating the request for the service (Judge et al. Col. 9 lines 3-40 and Matsumoto pg. 10 ¶ [0177], where choosing not to delete the data in a low or no memory situation results in a choice that terminates the request).

22. Consider **claim 16**, as applied to **claim 13** above, the combination of Judge et al. and Matsumoto disclose further including the step of effecting the removal of the application from the memory in response to the user selecting a choice associated with proceeding with the request for the service (Judge et al. Col. 9 lines 3-40 and Matsumoto pg. 10 ¶ [0177], where choosing to delete the data in a low or no memory situation results in a choice that allows for the proceeding of the request).

23. Consider **claim 17**, as applied to **claim 13** above, the combination of Judge et al. and Matsumoto disclose wherein the effect of removing the application includes losing

the application state (Judge et al. Col. 9 lines 3-40 and Matsumoto pg. 10 ¶ [0177], where the application loses its active state).

Response to Arguments

24. Applicant's arguments filed 10/23/2007 have been fully considered but they are not persuasive.

25. Applicant argues, with respect to **claims 1 and 18**, the Judge does not disclose "determining which of the plurality of applications to effect removal from the memory based on the received indication", however the applicant states on the second page of the arguments/remarks section of the response that "Judge discloses an application may become eligible for removal based on its application state", therefore ultimately the final decision is "based" on this eligibility that is determined from the application state and therefore meets the claim language, because the decision is based on this eligibility.

26. Applicant argues that the combination Judge and EJB is improper due to hindsight reasoning, however the examiner has provided explicit reasoning from within the EJB reference, which the examiner pointed to in the claim rejections that pertain to this combination of references, therefore hindsight reasoning is not present nor is it necessary.

27. Applicant challenges, with respect to **claims 7, 8, 11, 24, 25 and 28**, the official notice taken with regards to receiving an indication of a stateful state with no state record is common and well-known, the examiner is not persuaded by this argument. First, the applicant argues the "states of applications residing in memory of digital home

communication terminals or any other system involving memory management of television systems, is unquestionably an area of esoteric technology", even though the examiner disagrees with this assertion, the argument is moot because nowhere in the claim language is there any limitation that states "memory management of a television system" or a "digital home communication terminal", the claim language merely, broadly states: "a method of managing memory". However, because the applicant has challenged the examiners official notice, the examiner provides to the applicant the reference: Beginners Guide to Microsoft Word XP, Section 3. Opening and closing files, heading: leaving Word, where it states that if you try to close a document that has not been saved, a dialog box appears asking the user if they want to save before exiting and if they do not, they quit without saving the document, therefore disclose receiving an indication of a stateful state with no state record.

28. Applicant argues that the combination of Judge and Matsumoto is improper due to hindsight reasoning, In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Also Matsumoto, the motivation of managing the unintentional loss of user data

is present and referenced in the rejections using Matsumoto, therefore eliminating hindsight reasoning.⁶

Conclusion

29. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Alsip whose telephone number is 571-270-1182. The examiner can normally be reached on Monday through Friday 7:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matt Kim can be reached on 571-272-4182. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

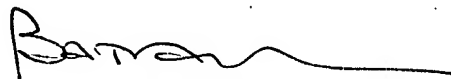
Michael Alsip
Examiner
Art Unit 2186

MA



December 14, 2007

spt 12/18/07


Barbara
12/19/07